

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF PENNSYLVANIA**

SIDNEY E. SMITH III, et al., executors	)	
of the Estate of Sidney E. Smith, Jr.,	)	
	)	
Plaintiff,	)	Civil Action No. 02-264 Erie
	)	
v.	)	Hon. Sean J. McLaughlin
	)	Hon. Susan Paradise Baxter
UNITED STATES,	)	
	)	
Defendant.	)	

**MOTION *IN LIMINE* TO EXCLUDE CERTAIN THEORIES OF RECOVERY  
NOT RAISED IN THE CLAIM FOR REFUND**

The United States of America requests this Court to prohibit plaintiffs from relying upon certain theories of relief not raised at the administrative level. In particular, the United States submits that the taxpayer is prohibited, under the doctrine of variance, from arguing to the jury (1) that the value of 100% of the corporate stock of Erie Navigation Company, which is the sole asset of the family partnership whose interests are being valued for gift tax purposes in this case, should be valued at less than the \$5.2 million asserted in the taxpayer's claim for refund, and (2) that the taxpayer is entitled to a refund in excess of the amount claimed in the taxpayer's claim for refund.

These grounds are more fully set forth in a memorandum in support of this motion, filed herewith. In addition, the United States relies upon pertinent excerpts from the taxpayer's Form 843, Claim for Refund and Request for Abatement, a true and correct copy of which is attached as Exhibit 1, and upon the entire record in this action.

A proposed form of order is submitted herewith.

WHEREFORE, the United States moves the Court for an order *in limine* prohibiting plaintiffs from arguing, at the trial of this matter, that (1) the value of 100% of the corporate stock of Erie Navigation Company should be valued at less than the \$5.2 million asserted in the claim for refund, and (2) the plaintiffs are entitled to a refund in excess of the amount claimed in the claim for refund.

Dated: September 8, 2005

Respectfully submitted,

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